Supreme Court, U.S.
FILED
JAN 18 2000
OFFICE OF THE CLERK

No. 99-991210

IN THE

Supreme Court of the United States

PETER NOORILY and RAYMOND P. NASTAWA,

Petitioners,

-and-

SIDNEY LEVY,

Petitioner,

-and-

WILLIAM O. DECK,

Petitioner,

v.

THOMAS & BETTS CORPORATION and EMPLOYEE BENEFIT PLAN OF THOMAS & BETTS CORPORATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PETER S. PEARLMAN
Counsel of Record
AUDRA DEPAOLO
COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Petitioners
Park 80 Plaza West One
Saddle Brook, New Jersey 07663
(201) 845-9600

157243

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

124pp

QUESTION PRESENTED

Whether an employer may make discretionary decisions of plan administration regarding an ERISA severance plan, solely in its own interest as the employer and unconstrained by ERISA's fiduciary requirements, merely because those decisions affect the employer's business.

TABLE OF CONTENTS

Page

Question Presented i

Table of Contents ii

Table of Cited Authorities iii

Table of Appendices vi

Opinions Below 1

Statement of the Basis for Jurisdiction 1

Statutory Provisions Involved 1

Statement of the Case 3

Reasons for Granting the Writ 8

The Third Circuit's Decision Is In Direct Conflict With ERISA Law As Established By The Relevant Decisions Of This Court And By Every Other Circuit That Has Dealt With The Important Issue Presented Herein Thus Also Creating A Conflict Among The Circuits. 8

Conclusion 16

TABLE OF CITED AUTHORITIES

Page

Cases:

Abbott v. Pipefitters Local Union No. 522, 94 F.3d 236 (6th Cir. 1996), *cert. denied*, 519 U.S. 1111 (1987) 8

Anderson v. Ciba-Geigy Corp., 759 F.2d 1518 (11th Cir.), *cert. denied*, 474 U.S. 995 (1985) 8, 13

Anderson v. Resolution Trust Corp., 66 F.3d 956 (8th Cir. 1995) 8

Berger v. Edgewater Steel Co., 911 F.2d 911 (3d Cir.), *cert. denied*, 499 U.S. 920 (1990) 10, 11

Braxton v. United States, 500 U.S. 344 (1991) 8

Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73 (1995) 8

Doe v. Group Hospitalization & Medical Serv., 3 F.3d 80 (4th Cir. 1993) 14

Firestone v. Tire & Rubber Co. v. Bruch, 489 U.S. 102 (1989) 9, 10, 12, 13, 14

Hlinka v. Bethlehem Steel Corp., 863 F.2d 279 (3d Cir. 1988) 9, 11

Cited Authorities

Page

Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155 (3d Cir. 1990) 9, 10

Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 119 S. Ct. 755 (1999) 10

James v. United States, 366 U.S. 213 (1961) 8

Lockheed Corp. v. Spink, 517 U.S. 882 (1996) 8, 9, 10, 11, 12, 13

Massachusetts Mutual Life Ins. Co. v. Russell, 473 U.S. 134 (1985) 9

Shaw v. Delta Airlines, Inc., 463 U.S. 85 (1983) .. 9

Siskind v. Sperry Retirement Program, Unisys, 47 F.3d 498 (2d Cir. 1995) 8

Systems Council EM-3 v. AT&T Corp., 159 F.3d 1376 (D.C. Cir. 1998) 8

Trenton v. Scott Paper Co., 832 F.2d 806 (3d Cir. 1987), *cert. denied*, 485 U.S. 1022 (1988) 9

Varity Corp. v. Howe, 516 U.S. 489 (1996) 9, 13

Vartanian v. Monsanto Co., 131 F.3d 264 (1st Cir. 1997) 8, 10

Walling v. Brady, 125 F.3d 114 (3d Cir. 1997) ... 9, 10

Cited Authorities

Page

Statutes:

28 U.S.C. § 1254(1) 1

29 U.S.C. § 1002(21)(A) 2, 12, 13

29 U.S.C. § 1104(a) 2, 9, 10, 12, 13

29 U.S.C. § 1132(a)(1)(B) 2

TABLE OF APPENDICES

Page

Appendix A — Order Of The United States Court Of Appeals For The Third Circuit Amending Slip Opinion Dated And Filed October 18, 1999 .... 1a

Appendix B — Opinion And Judgment Of The United States Court Of Appeals For The Third Circuit Dated And Filed August 25, 1999 ..... 6a

Appendix C — Order For Judgment Of The United States District Court For The District Of New Jersey On Post Trial Applications Dated October 15, 1998 And Filed October 16, 1998 ..... 33a

Appendix D — Opinion Of The United States District Court For The District Of New Jersey On Plaintiffs' Post-Trial Applications Dated And Filed September 14, 1998 ..... 37a

Appendix E — Order For Judgment Of The United States District Court For The District Of New Jersey (Amended As To Para. 2) Dated August 5, 1998 And Filed August 6, 1998 ..... 48a

Appendix F — Transcript Of Proceedings Of The United States District Court For The District Of New Jersey Dated July 7, 1998 ..... 52a

Appendix G — Order Of The United States Court Of Appeals For The Third Circuit Denying Petition For Rehearing Dated October 19, 1999 ..... 96a

Petitioners, Peter Noorily, Raymond P. Nastawa, Sidney Levy and William O. Deck (collectively, "Petitioners"), respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The amended opinion of the United States Court of Appeals for the Third Circuit is reported at *Noorily v. Thomas & Betts Corp.*, 188 F.3d 153 (3d Cir 1999) (App. A & App. B). The opinions of the United States District Court for the District of New Jersey are unpublished (App. D & App. F). A petition for rehearing was filed, and was denied on October 19, 1999 (App. G).

STATEMENT OF THE BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The United States Court of Appeals for the Third Circuit issued its denial of the petition for rehearing on October 19, 1999. This petition is timely filed within 90 days of the rehearing denial.

STATUTORY PROVISIONS INVOLVED

The Employee Retirement Income Security Act ("ERISA") provides:

> (a) Persons empowered to bring a civil action. A civil action may be brought — (1) by a participant or beneficiary. . . (B) to recover benefits due to him under the terms of the plan,

> to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

29 U.S.C. § 1132(a)(1)(B).

ERISA requires that:

> . . . [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and — (A) for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan; (B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. . . .

29 U.S.C. § 1104(a).

ERISA provides that:

> . . . a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets. . .or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan . . . .

29 U.S.C. § 1002(21)(A).

STATEMENT OF THE CASE

The Third Circuit's decision in this case ignores the express language of the controlling statute, places it in conflict with controlling precedent of this Court and with every other circuit which has dealt with this subject. It essentially destroys ERISA's protection for employees' right to severance benefits, one of the purposes for which ERISA was enacted. The decision allows employers — in the Third Circuit only — to ignore their ERISA mandated fiduciary obligations to their employees merely because it is in the employers' business interests to do so. A brief review of the virtually uncontradicted factual and procedural background of this case is helpful in understanding the significance of the important issue presented.

Each of the Petitioners was employed as an engineer in Thomas & Betts Corporation's ("T&B" or the "Company") electrical division in northern New Jersey for periods ranging from 17 to 25 years. In December 1991, T&B merged with a company then known as American Electric. As a result of that merger, T&B decided to move its engineering department to Memphis, Tennessee.

A number of meetings were held in early December 1991, during which T&B's employees, including Petitioners, were told by T&B executives that, due to the relocation of the division, if they did not move to Memphis they could no longer remain employees of T&B. They were repeatedly reassured, however, that in accordance with the Company's plan and its past business practices, if they did not move they would receive the severance benefits available to all T&B employees whose employment was involuntarily terminated.

When faced with the prospect of picking up their families and moving over 700 miles, most of the engineers elected not to go. T&B's response was as heavy-handed as it was swift. T&B announced that it would not pay the severance due to those employees who did not move. At first, that threat was aimed at pressuring the engineers into changing their minds. When that failed, it became a punishment, with management taking out its frustrations by depriving those long-term employees of the right which they had accrued through their years of devoted service.

The reasons that each of the Petitioners found it impossible to move to Memphis were compelling.

In January 1992, Mr. Noorily was 61 years of age and had been employed by T&B for over 22 years. He and his wife were responsible for caring for both his aged mother and his mother-in-law who was almost bedridden by arthritis.

Mr. Nastawa was 45 years of age and had been employed by T&B for over 17 years. He and his wife then cared for his mother-in-law who had Parkinson's disease and an amputated leg, his wife had a career position in the New Jersey area which she could not give up and his children were established in the school system.

Mr. Levy was 59 years of age and had been employed by T&B for over 20 years. He and his wife then cared for his mother-in-law who had breast cancer, diabetes, cataracts and other medical problems, both had lived in or near New Jersey for many years and they had two children, three grandchildren, and all of their relatives and friends in and near New Jersey.

Mr. Deck was 59 years of age and had been employed by T&B for over 25 years. He was then caring for his mother who was eighty-five years-old, and was partially blind as a result of macular degeneration.

T&B declined to give any of the Petitioners any guarantee of continued employment if they moved to Memphis, and each was acutely aware of the fact that the Company had a significant number of lay-offs in the engineering department, which had shrunk in size dramatically during the tenure of their employment.

Indeed, T&B sent each of the Petitioners a memoranda which contained a note expressly reminding them that they were, and would continue to be, at-will employees: "there is no guarantee that you will continue to work for Thomas & Betts until you are 65 years old, nor is there any guarantee that the terms of the aforementioned plans will not change. You must remember that the employment relationship in our Memphis operation is an at-will relationship. . . ." Petitioners were thus justifiably concerned that they could wind up in Memphis without jobs, after having sold their homes, uprooted their families and left their roots behind.

When Petitioners' employment was terminated, they sought the benefits due them under T&B's severance plan. However, despite the Company's long standing practice, its earlier assurances to Petitioners and its determination to pay severance benefits to all other employees in connection with this move, T&B refused to pay those benefits to Petitioners and five other engineers.

In making its decision, T&B acted solely out of its own business interests and with total disregard for the interests of the Petitioners, the beneficiaries of its severance plan.

Petitioners filed these actions in the United States District Court for the District of New Jersey, seeking to recover severance benefits due to them under defendant Employee Benefit Plan of Thomas & Betts Corporation provided by T&B.

After a five-day bench trial in June 1998, the Honorable Katharine S. Hayden, U.S.D.J. held that: Petitioners had been constructively discharged; T&B had breached its fiduciary duties under ERISA; and T&B had acted arbitrarily and capriciously in denying severance benefits to Petitioners. Based upon these holdings, the judge awarded Petitioners their severance benefits due under the plan (App. F). The judge also requested that the parties file additional papers on Petitioners' request for prejudgment interest, attorneys' fees and costs.

On August 6, 1998, Judge Hayden entered an order for judgment in favor of Petitioners, as follows: Peter Noorily in the amount of $70,621.80; Raymond P. Nastawa in the amount of $23,247.81; William O. Deck in the amount of $57,001.00 and Sidney Levy in the amount of $103,453.80 (App. E).

T&B filed a timely notice of appeal from that judgment on September 4, 1998 (Docket No. 98-6298), and Petitioners filed a timely cross appeal on September 14, 1998 (Docket No. 98-6328).

On October 19, 1998, Judge Hayden awarded Petitioners prejudgment interest from their respective last dates of employment, as well as attorneys' fees and costs (App. C & App. D). T&B filed a notice of appeal from that judgment on October 27, 1998 (Docket No. 98-6432). On December

9, 1998, the United States Court of Appeals for the Third Circuit consolidated the appeals.

On August 25, 1999, the United States Court of Appeals for the Third Circuit reversed the judgments entered by the district court on August 6, 1998 and October 19, 1998, affirmed the order of August 17, 1995, and remanded the case to the district court for entry of a judgment in favor of T&B (App. B).

Petitioners filed a motion for an extension of time to file their petition for rehearing, which was granted, as well as a petition for rehearing and rehearing *en banc*. The United States Court of Appeals for the Third Circuit denied rehearing on October 19, 1999 (App. G), but amended its August 25, 1999 opinion on October 18, 1999 (App. A).

Petitioners now file this timely petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

THE THIRD CIRCUIT'S DECISION IS IN DIRECT CONFLICT WITH ERISA LAW AS ESTABLISHED BY THE RELEVANT DECISIONS OF THIS COURT AND BY EVERY OTHER CIRCUIT THAT HAS DEALT WITH THE IMPORTANT ISSUE PRESENTED HEREIN THUS ALSO CREATING A CONFLICT AMONG THE CIRCUITS.

The opinion of the Third Circuit in this case is in direct conflict with ERISA law as established by this Court and by every other circuit that has dealt with the important issue presented here. *See, e.g., Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995); *Systems Council EM-3 v. AT&T Corp.*, 159 F.3d 1376, 1379 (D.C. Cir. 1998); *Vartanian v. Monsanto Co.*, 131 F.3d 264, 268 (1st Cir. 1997); *Abbott v. Pipefitters Local Union No. 522*, 94 F.3d 236, 239 (6th Cir. 1996), *cert. denied*, 519 U.S. 1111 (1987); *Anderson v. Resolution Trust Corp.*, 66 F.3d 956, 960 (8th Cir. 1995); *Siskind v. Sperry Retirement Program, Unisys*, 47 F.3d 498, 505 (2d Cir. 1995); *Anderson v. Ciba-Geigy Corp.*, 759 F.2d 1518, 1520-22 (11th Cir.), *cert. denied*, 474 U.S. 995 (1985). Thus, this petition should be granted because the Third Circuit's decision conflicts with relevant decisions of this Court, *see, e.g., James v. United States*, 366 U.S. 213, 215 (1961), and also creates a split among the circuit courts. *See, e.g., Braxton v. United States*, 500 U.S. 344, 347 (1991).

The court of appeals' determination that T&B was not acting as a fiduciary when it exercised its discretion to deny severance to Petitioners, virtually eviscerates the fiduciary obligations of employers acting as plan administrators.

Instead the court below established, in the Third Circuit alone, a standard which permits an employer to make decisions of plan administration solely in its own interest as the employer, so long as it will benefit the company's business to do so.

The fundamental purpose of ERISA is to protect the interests of employees and their beneficiaries in employee benefit plans by safeguarding contractually defined benefits, not to create an avenue for employers to avoid their contractual obligations to their employees. *Firestone v. Tire & Rubber Co. v. Bruch*, 489 U.S. 102, 113 (1989) (*citing Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 90 (1983) and *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985)). In furtherance of this goal, ERISA established standards of conduct, responsibility and obligation for plan fiduciaries, *Varity Corp. v. Howe*, 516 U.S. 489, 513 (1996), and directed the fiduciaries to perform their duties "solely in the interest of the participants and beneficiaries." *Id.* (*citing* 29 U.S.C. § 1104(a)).

The law is settled that where an employer makes a decision to adopt, modify, amend or terminate an ERISA plan, it functions as a settlor and is not acting as a fiduciary and, thus, may act in accord with its own interests — including its business interests. *See Lockheed*, 517 U.S. at 890; *Hozier v. Midwest Fasteners, Inc.*, 908 F.2d 1155, 1162 (3d Cir. 1990); *Hlinka v. Bethlehem Steel Corp.*, 863 F.2d 279, 285 (3d Cir. 1988); *Trenton v. Scott Paper Co.*, 832 F.2d 806, 809 (3d Cir. 1987), *cert. denied*, 485 U.S. 1022 (1988). In those cases, the employer is "alter[ing] the terms of," *Lockheed*, 517 U.S. at 890, "redesigning" or "tinkering with the plan document itself." *Walling v. Brady*, 125 F.3d 114, 119-20 (3d Cir. 1997). ERISA's fiduciary requirements

are not implicated when the employer, acting as the plan's settlor, makes a decision regarding the form or structure of the plan. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, —, 119 S. Ct. 755, 763 (1999).

However, the law is uniform — except, apparently in the Third Circuit — that where an employer exercises discretion in the administration of an existing plan, it acts as a fiduciary and, thus, owes both an undivided duty of loyalty, as well as a duty of good faith to covered employees. *Lockheed*, 517 U.S. at 890; *Firestone*, 489 U.S. at 113; *Vartanian*, 131 F.3d at 268; *Walling*, 125 F.3d at 120; *Hozier*, 908 F.2d at 1159; *Berger v. Edgewater Steel Co.*, 911 F.2d 911, 919 (3d Cir.), *cert. denied*, 499 U.S. 920 (1990); *see also* 29 U.S.C. § 1104(a).

The trial court found that T&B did not change or amend the severance plan itself (App. F at 77a). Rather, the Company's decision to apply its severance plan to deny benefits to a few employees while paying it to all other employees "was an act of welfare plan administration" (App. F at 79a). Thus, applying settled ERISA law, the court held that T&B "had a fiduciary duty to administer the plan with the benefit of the employees in mind and not its own management welfare" (App. F at 79a).

Although the court of appeals conceded that T&B's conduct here did not involve the adoption, modification, amendment or termination of the plan, *i.e.*, settlor functions, but rather involved the administrative decision of whether to pay severance under the plan as written, it nonetheless made the unprecedented determination that T&B had no fiduciary responsibility to the Petitioners (App. A at 4a & App. B at 17a).

The court below reached its decision by establishing a new standard which exempts "making business decisions" from ERISA's administrative functions. (App. A at 4a & App. B at 17a) ("the employer acts as a fiduciary when administering a plan but not when designing a plan *or making business decisions*") (emphasis added). This standard is wholly contrary to the established law as articulated by this Court, *Lockheed*, 517 U.S. at 890, and by every other circuit court which has spoken on the subject.

The Third Circuit impermissibly extended its prior decisions in which plan administrators had no discretion because they were expressly required by the written terms of the plan to place the employer's business interests first. *See, e.g., Hlinka*, 863 F.2d at 283 & 286 (because the plan stated that the employees could retire early "so long as the company deems such retirement to be in 'its interest,' " the plan gave administrator "no element of discretion"); *Berger v. Edgewater Steel Co.*, 911 F.2d at 914 n.2 & 919 (as the plan provided that employees could retire early only if "the Company considers that such retirement would likewise be in its interest, . . . the Plan itself did not give the fiduciary discretionary authority to determine eligibility for benefits . . . and the Plan required [the administrator] to accept the employer's decision").

Based on the mandatory language of the plans in *Hlinka* and *Berger* and the corresponding lack of discretion, the administrators in those cases would have breached their duties if they had not abided by the employer's business interests. *Hlinka*, 863 F.2d at 286; *Berger*, 911 F.2d at 919.

Unlike those cases, however, the plan here grants discretion to the administrator and does not contain a mandate

that — or even permit — the administrator to consider and/or abide by T&B's business interests when exercising that discretion in determining whether to pay severance. Indeed, the law as established by this Court requires that the administrator exercise its discretion as a fiduciary to the plan participants. *Lockheed*, 517 U.S. at 890; *Firestone*, 489 U.S. at 113. Thus, it was arbitrary, capricious and a breach of its fiduciary duties for T&B to act in its own interest, rather than in the interest of the participants when administering its severance plan.

The Third Circuit has established a new rule, unprecedented legally and unjustifiable from a policy standpoint. This new rule provides that any time an employer/plan administrator uses its discretion to make a decision which has business implications, it is unconstrained by fiduciary duties to the covered employees. Thus, where the employer exercises its discretion to deny severance based upon a business consideration, it will not be deemed to owe the plan participants any fiduciary duty. This proposition is contrary to ERISA's express statutory language, 29 U.S.C. § 1002(21)(A), § 1104(a), this Court's decision in *Lockheed*, 517 U.S. at 890 (employer is a fiduciary when exercising "discretionary authority" granted under the plan), and the decisions of every circuit which has spoken on the subject.

ERISA law is settled that a

> person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, . . . , or (iii) he has any discretionary

> authority or discretionary responsibility in the administration of such plan.

29 U.S.C. § 1002(21)(A); *Firestone*, 489 U.S. at 113.

The fiduciary duties under § 1104(a) attach to employers, such as T&B, who serve as plan administrators "to the extent [they] exercise [ ] any discretionary authority or control" under the plan. *Firestone*, 489 U.S. at 113. Thus, an executive of a corporation who decides that an employee is not entitled to severance is acting "as a fiduciary when making his no severance pay determination," regardless of "his title or whether he was named as a fiduciary." *Anderson*, 759 F.2d at 1522.

Likewise, the decision made by T&B's then CEO to classify a small group of employees (including Petitioners) as "key" or "critical" employees (a classification that nowhere exists in the plan itself) and, thus, treat them differently under T&B's severance plan constituted a decision about, or an act of, plan administration. In making that decision, the CEO, himself, conceded that he was exercising discretionary authority or responsibility in the management or administration of T&B's severance plan (I "understood that I had the flexibility and discretion to apply the policy, and particularly to apply the severance where it was appropriate or where it was not appropriate").

Because, as the Third Circuit conceded, T&B was clearly exercising discretion in the administration of its severance plan, the law mandates that T&B's decision to deny severance to Petitioners had to be made "solely with the interests of the covered employees in mind." *Lockheed*, 517 U.S. at 890; *Varity Corp.*, 516 U.S. at 513. The trial court

correctly found that T&B's decision to deny severance to a small group of employees, while paying it to all other employees who declined to relocate in accordance with the Company's plan, clearly was not made "solely with the interests of the covered employees in mind."

Additionally, when determining whether a denial of benefits is arbitrary and capricious, a court also may consider an ERISA administrator's conflicts of interest as a factor. *Firestone*, 489 U.S. at 115 ("if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'facto[r] in determining whether there is an abuse of discretion' ")). Hence, when a plan administrator is exercising discretion, under a conflict of interest, any deference to which his decision is entitled "will be lessened to the degree necessary to neutralize any untoward influence resulting from the conflict." *See, e.g., Doe v. Group Hospitalization & Medical Serv.*, 3 F.3d 80, 87 (4th Cir. 1993).

In this case it is beyond dispute that T&B's CEO was operating under a conflict of interest. Unfortunately, and contrary to law, he "resolved" this conflict by acting only in T&B's interest, and entirely ignoring the interest of the plan participants. Indeed, the trial court found that T&B's decision was based on "punitive coercive motives designed solely to protect and benefit the employer to the detriment of plaintiffs" (App. F at 86a).

Arbitrarily denying severance benefits to Petitioners, while at the same time granting it to all other employees in no way furthered the purpose of T&B's severance plan, which was to "provide a schedule of severance pay and

benefits continuation in the event of an involuntary termination."

It is the fiduciary duty to these long term plan participants, which exists by statute, by this Court's mandate and in every other circuit, that the Third Circuit has now eliminated by exempting "discretionary business decisions" from ERISA's administrative functions. The Third Circuit's decision eradicates the fiduciary obligations of employers acting as ERISA plan administrators, by allowing the employer to make decisions of plan administration solely in its own interest as the employer, so long as its decisions benefit the company's business.

Because the decision allows employers in the Third Circuit to ignore ERISA's fiduciary standards of conduct, responsibility and obligation, it provides the employers with a method of circumventing their contractual obligations, thereby leaving employees in the Third Circuit alone without any protection whatsoever. Thus, it is imperative that this Court take action to restore ERISA's protection to employees in the Third Circuit, by reaffirming that ERISA's fiduciary obligations attach to all discretionary decisions of plan administration.

CONCLUSION

For all of the above reasons, Petitioners respectfully request that their petition for a writ of certiorari be granted.

Respectfully submitted,

PETER S. PEARLMAN
Counsel of Record
AUDRA DEPAOLO
COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Attorneys for Petitioners
Park 80 Plaza West One
Saddle Brook, New Jersey 07663
(201) 845-9600